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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/307,511	05/07/1999	GUY BOURDON	PBLMD-51494	4934

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FULWIDER PATTON LEE & UTECHT, LLP  
HOWARD HUGHES CENTER  
6060 CENTER DRIVE  
TENTH FLOOR  
LOS ANGELES, CA 90045

EXAMINER

EREZO, DARWIN P

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 11/29/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/307,511

Applicant(s)

BOURDON, GUY

Examiner

Darwin P. Erezo

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 16-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-19, 21, 22 and 24 is/are rejected.
- 7) ☐ Claim(s) 20, 23 and 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 12.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Response to Arguments*

1. With respect to Applicant's arguments filed 10 September 2001, a new art rejection has been set forth in this office action.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 16-19, 21, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Izumi (4,635,631) in view of Chopin et al. (5,129,390).
4. **As to Claim 16**, Izumi teaches a breathing aid device comprising:
  - a patient connection (see Fig. 1);
  - an inspiratory branch **A** in fluid communication with the patient connection, the inspiratory branch including an inspiration valve **1**;
  - an expiratory branch **B** in fluid communication with the patient connection and the inspiratory branch;

means for controlling expiration **3** in fluid communication with the expiratory branch, the means for controlling expiration including an expiration valve **E**;

means for detecting pressure **2** operatively connected to the inspiratory branch; and

means for ventilating in fluid communication with inspiratory branch, the means for ventilating including means for supplying a breathable gas through the inspiratory branch at an adjustable pressure (flow volume control valve **1** adjusts the volume depending on the pressure; col. 2, lines 18-64), the means for ventilating further including means for controlling the inspiration valve and the expiration valve (through comparators **4** and **5** and through expiration valve controller **3**, respectively), the means for ventilating further including pressure control means for comparing a pressure command to a pressure signal provided by the means for detecting pressure and for adjusting the pressure of the means for supplying (col. 2, lines 28-38).

Izumi fails to teach a means for regulating a patient's breathed volume.

Chopin et al. teach a means for regulating a patient's breathed volume, the means for regulating including means for controlling volume (col. 8, lines 28-52) and means for measuring volume **27**, wherein the means for controlling volume provides the pressure command to the pressure control means and wherein the means for measuring volume provides a signal indicative of a measured volume of breathed gas to the means for controlling volume (col. 9, lines 39-41).

Therefore, it would have been obvious to one having ordinary skill in the art to add the means for regulating a patient's breathed volume taught by Chopin et al. to the device of Izumi because it enables the total tidal volume of respirable gas insufflated into the patient to be controlled (col. 2, lines 51-55).

5. **As to Claim 17 and 18**, it is well known in the respiratory art to use a facial mask or a nasal mask for connection to a patient.

6. **As to Claim 19**, it is well known in the respiratory art to use an adjustable speed motor-turbine set.

7. **As to Claim 21**, Izumi teaches a breathing aid device comprising

a patient connection (see Fig. 1);

an inspiratory branch **A** in fluid communication with the patient connection, the inspiratory branch including an inspiration valve **1**;

an expiratory branch **B** in fluid communication with the patient connection and the inspiratory branch;

an expiratory device in fluid communication with the expiratory branch, the expiratory branch including an expiration valve **E**;

a pressure detector **2** operatively connected to the inspiratory branch;

a ventilation unit in fluid communication with the inspiratory branch, the ventilation unit including a source of breathable gas at an adjustable pressure, the ventilation unit further including a valve controller **10,12; 3** for opening and closing the inspiration valve and the expiration valve, the ventilation unit further including a pressure controller **8** for comparing a pressure detected by the

pressure detector to a pressure command and for adjusting the pressure of the source of breathable gas; and

Izumi fails to teach a regulator for regulating a patient's breathed volume, the regulator including a control unit and a measuring unit, wherein the control unit provides the pressure command to the ventilation unit, and wherein the measuring unit provides a signal indicative of a measured volume of breathed gas to the control unit.

Chopin et al. teach a regulator for regulating a patient's breathed volume, the regulator including a control unit (col. 8, lines 28-52) and a measuring unit **27**, wherein the control unit provides the pressure command to a ventilation unit, and wherein the measuring unit provides a signal indicative of a measured volume of breathed gas to the control unit.

Therefore, it would have been obvious to one having ordinary skill in the art to add the regulator taught by Chopin et al. to the device of Izumi because it enables the total tidal volume of respirable gas insufflated into the patient to be controlled (col. 2, lines 51-55).

8. **As to Claim 22**, it is well known in the respiratory art to use an adjustable speed motor-turbine set.

9. **As to Claim 24**, As to Claim 21, Izumi teaches a breathing aid device comprising a patient connection (see Fig. 1);  
an inspiratory branch **A** in fluid communication with the patient connection,  
the inspiratory branch including an inspiration valve **1**;

an expiratory branch **B** in fluid communication with the patient connection and the inspiratory branch;

an expiratory device in fluid communication with the expiratory branch, the expiratory branch including an expiration valve **E**;

a pressure detector **2** operatively connected to said inspiratory branch;

a source of breathable gas at an adjustable pressure in fluid communication with the inspiratory branch (see Fig. 1);

a valve controller **10,12; 3** for opening and closing the inspiration valve and the expiration valve;

a pressure controller **8** for comparing a pressure detected by the pressure detector to a pressure command and for adjusting the pressure of the source of breathable gas; and

a control unit **4,5** for providing the pressure command to the pressure controller

Izumi fails to teach a measuring unit for providing a signal to the control unit indicative of a measured volume of breathable gas detected per breathing cycle to the patient connection.

Chopin et al. teach a measuring unit **27** for providing a signal to a control unit indicative of a measured volume of breathable gas detected per breathing cycle to the patient connection:

Therefore, it would have been obvious to one having ordinary skill in the art to add the measuring unit of Chopin et al. to the device of Izumi because it measures the

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total tidal volume of respirable gas insufflated into the patient and thus allows the volume to be monitored and controlled (col. 2, lines 51-55).

***Allowable Subject Matter***

10. Claims 20, 23, and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who whose telephone number is (703) 605-0420. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



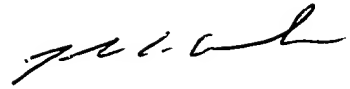
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November 17, 2001



John G. Weiss  
Supervisory Patent Examiner  
Group 3700